

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURICE CALDWELL,
Plaintiff,

v.

CITY OF SAN FRANCISCO, et al.,
Defendants.

Case No. 12-cv-01892-EDL

ORDER

Re: Dkt. No. 161

On August 21, 2015, Defendants filed a motion to compel production of documents and deposition testimony from attorney Paige Kaneb. On September 30, 2015, this Court ordered supplemental briefing as to whether the exception to -- rather than waiver of -- the attorney-client privilege created by California Evidence Code section 958 applies to the filing of Ms. Kaneb's August 11, 2010 declaration without a protective order in support of Plaintiff's habeas petition. While a close question as there are no cases directly on point, Ms. Kaneb's declaration is relevant to Plaintiff's claim of ineffective assistance of counsel as it bears on whether Plaintiff was prejudiced by his trial attorney's failure to investigate Henry Martin. Accordingly, under section 958, it appears that California courts would likely find that Plaintiff did not waive privilege by the filing of Ms. Kaneb's declaration in support of his habeas petition. See Fed. R. Evid. 502(c) ("When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure . . . is not a waiver under the law of the state where the disclosure occurred.").

IT IS SO ORDERED.

Dated: October 9, 2015


ELIZABETH D. LAPORTE
United States Magistrate Judge